IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 682 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LILABEN CHANDUBHAI PATEL THRO' POWER OF ATTON.

Versus

INDRAVADANBHAI ALIAS CHUNILAL PATEL

Appearance:

MR NALIN K THAKKER for Petitioner Nos. 1-2

MR NITIN N PANDYA for Respondent Nos. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/03/2004

ORAL JUDGEMENT

The petitioners are defendants 3 and 4 of Civil Suit No.2358 of 1995. The said suit was filed by respondent No.1, for partitioning ancestral property.

In the aforesaid suit, the plaintiff submitted an application for permitting him to withdraw the suit, which was granted by the trial court. The present petitioners, who are original defendants 3 and 4, therafter, gave an application, Exhibit 68, requesting the learned Judge to allow them to be transposed as plaintiffs in place of the original plaintiff.

The trial Judge has rejected the said application, against which this Civil Revision Applicaiton is filed by original defendants 3 and 4.

Mr.Thakkar, learned Advocate for the petitioners, has submitted that since the suit being a partition suit, the Court should have allowed that application, by allowing the present petitioners to continue the suit as plaintiffs, by permitting such transposition. He has also relied upon the provisions of Order 23 Rule 1A of the Code of Civil Procedure, to substantiate the said argument. However, Mr.Thakkar has fairly conceded that, in view of the amendment of Section 115 of the Code of Civil Procedure, this revision against the impugned order is not maintainable, as it would not terminate the main proceedings, finally. He, therefore, submitted that the petitioners would like to file a substantive Special Civil Application under Article 227 of the Constitution of India, challenging the impugned order of the trial court and for that purpose, he has requested that he may be permitted to withdraw this Civil Revision Application. In view of the fact that this CRA is not maintainable, the petitioners are permitted to file a substantive Special Civil Applicaiton under Article 227 of the Constitution of India, for challenging the impugned order of the trial court and for that purpose, the petitioners are permitted to withdraw this Civil Revision Application.

This civil Revision Application is accordingly disposed of as withdrawn. Rule is discharged, with no order as to costs.

Mr.Thakkar submitted that this Court, while admitting the CRA, passed an order of interim injunction, restraining the respondents from transferring or alienating the suit property. Since the interim relief is in force, as on today, the same is ordered to be continued till 2nd April, 2004.

9th March, 2004 (P.B. Majmudar, J.)

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(apj)